

Commission Statement on Sentencing

((Joined by Commissioners Gallagher, Brownsberger,
Kinscherff, Knight, Guidry, and Levy)

The Commission by a close vote has decided not to make significant recommendations in the area of sentencing and correction policy, but rather to make this minimal statement regarding sentencing policy. Some Commissioners feel that exploring this area is beyond the scope of the Commission, that the Commission lacks the time to examine this area of policy in sufficient detail to take a position or make recommendations, or that the Commission has not heard or received any testimony on this topic that would allow the Commission to formulate a position or to make informed recommendations.

The Commission, however, does take note of the following:

1. Incarceration can be a tool for prevention of recidivism. Sex offenders cannot reoffend while incarcerated against members of the public. Incarceration can, however, increase the risk of recidivism upon release in some circumstances.
2. Treatment and monitoring while incarcerated¹ and while under the supervision of parole or probation provide strong incentives and controls on offenders who may benefit from such programs and policies.
3. Assuming reliable assessment and treatment is available, literature suggests that having that information available to a judge at sentencing is critical.²

¹ The U.S. Department of Justice Federal Bureau of Prisons Sex Offender Programs serves as one example of programs seeking to provide treatment to incarcerated sex offenders. These particular programs seek to establish "Treatment Programs that provide sexual offenders [in Bureau institutions] the opportunity to change behaviors, thereby reducing criminality and recidivism; Specialized correctional management practices to address behavior that indicates increased risk for sexual offenses upon release; Evaluation services to appraise risk of sexual offenses upon release and provide recommendations for effective reintegration into the community; and Transition services for sexual offenders releasing to the community." (U.S. Department of Justice Federal Bureau of Prisons PROGRAM STATEMENT OPI: CPD/PSB; NUMBER: 5324.10; DATE: February 15, 2013- Sex Offender Programs.

² See, e.g., The Importance of Assessment in Sex Offender Management: An Overview of Key Principles and Practices, The Center for Sex Offender Management (US DOJ) 2007, *available at* http://www.csom.org/pubs/assessment_brief.pdf ("Following an individual's conviction or adjudication for a sex offense, the judge bears the responsibility for determining the most suitable disposition. Yet for a number of reasons, judges report experiencing more difficulty making disposition decisions in adult- and juvenile-perpetrated sex offense cases than in other types of criminal or delinquency cases (Bumby & Maddox, 1999; Bumby, Talbot, West, & Darling, 2006). Therefore, at this early phase of the criminal or juvenile justice process, formal assessments such as presentence reports and psychosexual evaluations (which identify level of risk and intervention needs) can be helpful for judges as they consider the disposition of these cases.").

² Caldwell, M., Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offender, *Sexual Abuse: A Journal of Research and Treatment*, 19(2), 107-113 at 112 (2007).

4. Supervision and treatment should complement each other to maximize public safety. These are practices that can be accomplished through sentencing.
5. Having good risk evaluation and pre-sentencing analysis available at sentencing will allow a judge to target higher risk offenders with more intensive court-ordered treatment strategies including longer periods of supervision or treatment. It should also be noted that it is widely accepted that over-supervision of low-risk offenders can have the unintended consequence of increasing recidivism risk.
6. Recidivism prevention is only one potential consideration a judge may take into account in sentencing.

While the Commission did not endeavor to address these areas during its work, sentencing is clearly an important area of consideration for policymakers considering strategies to reduce recidivism.